

JUDICIAL BRANCH FAMILY DIVISION

IMPLEMENTATION COMMITTEE



REPORT AND RECOMMENDATIONS

December 1, 2004

STATE OF NEW HAMPSHIRE  
SUPREME COURT

LINDA STEWART DALIANIS  
ASSOCIATE JUSTICE

N.H. SUPREME COURT  
CONCORD, N.H. 03301  
(603) 271-3415  
FAX: (603) 271-6630



November 30, 2004

TO: Governor Craig Benson, Senate President Thomas R. Eaton, Speaker of the House of Representatives Gene G. Chandler, Chief Justice of the Supreme Court John T. Broderick, Jr., Clerk of the Senate Steven J. Winter, Clerk of the House Karen O. Wadsworth, New Hampshire State Library Supervisor of Cultural Resources Eleanor O'Donnell

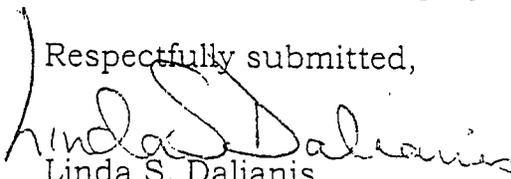
On behalf of the Judicial Branch Family Division Implementation Committee, created pursuant to HB 643-FN, it is with pleasure that I submit to you the Committee's final report to the Legislature.

Over the past eight months, the Committee has worked diligently and cooperatively to develop a plan for statewide implementation of the Judicial Branch Family Division. The plan, as proposed, attempts to honor the legislative goals set out in the original Family Division Pilot Project, while at the same time being mindful of facility and resource limitations. It is the Committee's hope that, with legislative approval of this plan, the Chief Justice of the Supreme Court can begin its implementation in a way that will make the best possible use of available resources, disrupt Judicial Branch staff as little as possible and, most of all, improve the delivery of services to New Hampshire families.

You should be aware that there is nothing about this plan that contradicts the recently submitted Findings and Recommendation of the Family Law Task Force. In fact, the Committee believes that this plan will complement the work of the Family Law Task Force.

We thank you for the opportunity to work on this important project.

Respectfully submitted,

  
Linda S. Dalianis  
Chair

LSD/pah

**JUDICIAL BRANCH FAMILY DIVISION  
IMPLEMENTATION COMMITTEE**

The Judicial Branch Family Division Implementation Committee (“Committee”) consists of members of the judiciary and bar selected by the New Hampshire Supreme Court and members of the legislature selected by the Speaker of the House and President of the Senate.

Hon. Linda Stewart Dalianis, Chair  
Associate Justice, Supreme Court

Hon. Robert J. Lynn, Chief Justice, Superior Court

Hon. Edwin W. Kelly, Administrative Judge, District Court and Family Division

Hon. John R. Maher, Administrative Judge, Probate Court

Hon. John A. Korbey, Supervisory Judge, Rockingham County Family Division

Hon. Pamela D. Kelly, Marital Master, Family Division

Hon. Robert E. Clegg, Jr., Senate Judiciary Committee

Hon. Henry P. Mock, Chair, House Judiciary Committee

Hon. Kenneth L. Weyler, House Finance Committee

Donald D. Goodnow, Esq., Director, Administrative Office of the Courts

Gina B. Apicelli, Esq., Family Division Administrator

Nina C. Gardner, Executive Director, New Hampshire Judicial Council

L. Jonathan Ross, Esq.

Hon. Anne D. Barber, recently appointed Superior Court Marital Master.

Alternate members of the Committee, selected by the Speaker of the House are

Hon. Elizabeth S. Hager and Hon. David W. Hess.

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The work of the Judicial Branch Family Division Implementation Committee, set out in this report, represents the culmination of a longstanding discussion about how the court system could best serve New Hampshire families in need. The Committee is grateful to the judges, marital masters, lawmakers and staff who have made it possible for us to come forward with a plan that will have such an important impact on the men, women and children of our state.

New Hampshire Supreme Court Chief Justice John T. Broderick Jr. brought the project to the forefront of decision-making this year and we are grateful both for his firm belief in the process, and for the backing he received from the members of the Supreme Court. Gov. Craig Benson's immediate support for legislation that allowed for expansion of the Family Division statewide was critical to the project becoming a reality, and we thank him for his commitment. We commend members of the House and Senate, for their willingness to take on this challenging task for the sake of New Hampshire families.

Superior Court Chief Justice Robert J. Lynn, and the members of the Superior Court bench, are owed our thanks as well for their willingness to allow us to draw on the valuable resources of the Superior Court to provide enhanced court services to New Hampshire families. We believe that the public interest will be well served by these changes, which would not have been possible without the level of cooperation we saw throughout state government to make the statewide family division a reality. We are grateful as well to the District and Probate Courts for their contributions and ongoing enthusiasm for strengthening the family division. We would be remiss if we failed to acknowledge the dedicated efforts of the family division staff in Grafton and Rockingham Counties; without their efforts, we would not have had a successful model upon which to build.

No report can be completed without valuable staff support. Gary Fowler, from the Administrative Office of the Courts, provided us with the analysis of judicial and clerical time needed to staff the expanded family division, which helped to guide our decisions about a statewide implementation plan. Susan Duncan, senior legislative aide in the New Hampshire Senate, attended our meetings and created a careful record of our work which provided needed direction for busy Committee members. Howard Zibel, general counsel to the Supreme Court, provided us with the legislative guidance we needed to formalize our work. Laura Kiernan, the court system's public information officer, edited and polished our report.

The Committee expresses its appreciation to all who contributed to this report. Through their work, they will have helped create a system in which New Hampshire families can resolve the difficult issues in their lives, fairly and efficiently, and then move on. That is our goal.

## EXECUTIVE SUMMARY

The Family Division Implementation Committee, pursuant to HB 643-FN, was appointed by the Supreme Court to make recommendations for statewide expansion of the family division and for changes in the family divisions in Grafton and Rockingham Counties. The Committee makes the following findings and recommendations, recognizing the intent of the legislature to implement a statewide system that “expeditiously achieves the goal of providing enhanced services to parties involved in cases relating to divorce, custody, children, domestic violence and other family law matters.”

### **1. Reduce the Adversarial Nature of Proceedings Involving Families**

- Development of court process that respects and encourages a reduction of the adversarial process in family related issues.
- Increase use of mediation to encourage party-centered agreements.

### **2. Locate Family Division Sites in Areas Geographically Accessible to Families**

Establish 21 Judicial Branch Family Division (JBFD) sites in addition to the existing eight sites in Grafton and Rockingham Counties. The JBFD should be fully operational in three years, if facilities issues can be solved.

### **3. Draw Upon Experienced Judges and Staff Committed to Family Related Issues**

- The committee recommends that each trial court transfer to the JBFD judicial resources equal to its transferred weighted caseload.
  - a. Superior Court: all existing marital master positions will be transferred
  - b. District Court: funds equivalent to those used to adjudicate domestic violence and juvenile matters will be transferred
  - c. Probate Court: funds equivalent to those used to adjudicate termination of parental rights and guardianship over minor matters and some adoptions will be transferred.
- Once the size of the superior court has been reduced to 22 judges (as provided for in HB 643-FN through judicial retirements), superior court judges will no longer hear marital cases.
- Staff currently performing functions related to the JBFD jurisdiction should, wherever possible, be transferred into similar positions in the JBFD.
- As demonstrated by eight years of experience within the family division pilot project, case managers are the most effective and positive link between the court and self-represented litigants.

- Eleven regional clerks will have administrative responsibility for one or more smaller JBFD locations. Each site without a full-time clerk will have a staff member with authority to make decisions.

#### **4. Increase visibility of the Family Division Within the Judicial Branch Administrative Structure**

- A JBFD administrative judge will be a member of the judicial branch administrative council and report directly to the supreme court. Regional supervisory JBFD judges and masters will assist the administrative judge as needed.

#### **5. Statewide Implementation Plan**

- Coos, Carroll and Sullivan Counties would be added to the JBFD in FY 2006.
- Depending upon facilities, Strafford and either Belknap or Merrimack Counties would be added next.
- Hillsborough County Northern and Southern Districts would be added next.
- Because of facilities limitations in Cheshire County, the Committee recommends that county be added to the JBFD last, although it is possible that the districts served by Jaffrey/Peterborough District Court could be added sooner.

#### **6. Effect of Statewide JBFD on Existing Trial Courts**

- Superior court judges in smaller counties likely will be “grouped” with adjacent counties for judicial assignment purposes and judges will sit in each county only as often as necessary.
- District and probate court judges will be invited to serve as family division judges as the JBFD expands statewide. The Committee recommends that in selecting family division judges, the supreme court include geographic connection between the judges and the sites in which they will serve.
- The supreme court will facilitate use of probate court judges in judicial staffing of the JBFD.
- In JBFD clerical assignments, every attempt will be made to place employees at or near their current court location. Care will be taken not to burden unduly the smaller counties when transfers are made.

#### **7. Recommended Statutory Changes**

- Enact legislation for statewide JBFD implementation
- Governor and Council appointment of fulltime JBFD judges

## **8. Statewide Issues**

The Committee urges recognition of the fact that over time, additional resources such as greatly increased numbers of cases managers, are likely to be necessary, especially for more improved and expeditious handling of JBFD cases. Record taking and security will also be key issues .

### **PROCEDURAL HISTORY OF THE COMMITTEE**

The first meeting of the Committee was held on April 1, 2004. The Committee discussed jurisdictional issues, logistical issues and philosophical issues, in the end deciding not to revisit old debates, but rather to focus upon the implementation of as practical a plan as could be devised to meet the needs of citizens with family issues within the jurisdiction of the New Hampshire Judicial Branch Family Division (JBFD).

The Committee began its work by reviewing the availability of judges and masters to hear cases in the JBFD. HB 643-FN (**See Appendix A**) was introduced and passed in the 2004 Legislative Session, with the strong support of the Governor, legislative leadership and the judicial branch. The effect of that bill on available resources to the JBFD is, that as the next seven judges of the superior court leave office, the number of judges in that court will be reduced and the funds related to those positions will be used for family cases. In combination with the effect of reduced caseloads in the district and probate courts, this will make up to 14 full time equivalent judicial officers available in the JBFD, at no additional budgetary expense.

The Committee recognizes and expresses its gratitude to the Governor, Legislature and trial courts for their support and cooperation in this process. When the Superior Court is reduced to twenty-two judges, the Superior Court judges will no longer handle family cases, unless a particular Superior Court Judge opts to continue a previously assigned case through to conclusion. Judges of the District and Probate Courts will be given the opportunity to seek certification to serve in the JBFD .

At the conclusion of its first meeting, the Committee agreed:

1. That the subject matter jurisdiction of the JBFD, which includes divorces, juvenile delinquency, abuse and neglect cases and other family matters, would remain the same as it is currently in Grafton and Rockingham Counties, with the possible exception of removing some adoptions from JBFD jurisdiction.

2. That, in view of the limited resources available for the reasonably foreseeable future, its final proposal would, of necessity, be constrained by existing court facilities and their suitability as locations for JBFD sites, and that

developing a site proposal would be the first of several discrete tasks to be undertaken.

3. That it would be necessary to determine, based upon the latest-available weighted caseload figures, how many clerical staff and how many full-time judge equivalents would be required to staff a statewide JBFD. The Committee recognizes, however, that part-time judges will be an essential component of the JBFD until such time as a truly full-time judicial staff can be devoted to it. The precise number of marital masters and judges from the district and probate courts (or, the Committee hopes, a new category of full-time judge known as a family division judge), will be determined based upon the objective information available to us through the weighted caseload system, taking into account any new initiatives for the alternative resolution of these disputes outside of the traditional courtroom setting.

4. That a subcommittee ("working group") headed by Judges Lynn and Kelly and Director Goodnow, would immediately begin to develop a proposed site plan, staffing plan and governance plan, subject to review by the Committee. A working group was deemed necessary because the amount of work to be done was so extensive that the full Committee could not convene often enough to accomplish the work before its report to the Legislature would be due.

At the second meeting of the Committee, on May 17, there was additional debate about jurisdiction and other issues, such as staffing and governance.

The working group expanded to include Judge Dalianis, Judge Korbey, Nina Gardner, Gina Apicelli, and Gary L. Fowler, Court Services Representative, AOC. All Committee members were welcome at working group meetings and some were able to attend at times. The working group met regularly between May 13 and December 1.

## **REPORT AND RECOMMENDATIONS**

### **1. Reduce the Adversarial Nature of Proceedings Involving Families**

The legislatively articulated goals for the JBFD include the aspiration that alternative dispute resolution be utilized to reduce the adversarial nature of proceedings involving families. The working group spent a considerable amount of time devising and reviewing a plan to introduce ADR into marital cases involving children. The plan, still in the process of development, will require the speedy scheduling of these matters for a case management meeting with a specially trained case manager followed by a session in front of a "referee" in which the parties will be given an opportunity to address their respective positions concerning the amount of child support.

It is the goal of this new process to move these extremely important matters through the court system in a far speedier and less adversarial way. Referees and case managers will in part be funded through Federal IV-D funds. In addition to this new process, the administrators of the existing family division are working to enhance the use of mediation and neutral case evaluation, as well as utilizing creative means of addressing the many juvenile issues affecting children and families across the state.

### **2. Locate Family Division Sites in Areas Geographically Accessible to Families**

Chapter 152 of the 1995 Laws of New Hampshire provided that "the goals of the Family Division are the respectful treatment of all citizens by justices, marital masters and other family division staff, the prompt and fair resolution of family issues by justices and marital masters specially selected and trained to deal effectively with such issues, the use of alternative dispute resolution to reduce the adversarial nature of proceedings involving families, and the assignment of all family matters of a single family to one family division justice or marital master located in a Family Division Court that is geographically accessible to the family."

The Committee considered the legislative intent of the family division as indicated by this goal statement. Geographic accessibility was obviously a keystone of the legislation creating the Family Division as well as the study committees' recommendations. Families in crisis require easy access to the court system, which also reduces the expense to all parties who no longer have to travel long distances to court themselves or pay their legal representatives to do so. The Committee, after reviewing existing district and superior/probate court locations, recommends twenty-one JBFD sites in addition to the existing eight sites in Grafton and Rockingham Counties. We have reviewed the facilities and recognized that some of them will require upgrades and improvements. It is our expectation that most of these improvements will be addressed through the legislatively created facilities escrow fund, established precisely for this purpose.

On September 8<sup>th</sup>, mindful that the proposal is limited by the suitability and size of existing facilities, the Committee approved the recommendation of the following sites:

**Belknap County:** Belknap County Superior Court or Laconia District Court and Franklin District Court (for certain towns).

The Belknap County proposal contemplates using the entire Laconia District Court building as a JBFD site and moving the remaining District Court functions into the Belknap County Superior Court. The district court building is the Committee's preferred facility, because the superior court needs jury courtrooms, which do not exist in the district court building.

**Carroll County:** Ossipee court facility and the District Court for Northern Carroll County, in Conway.

The Carroll County proposal recognizes the geographic need for JBFD sites in both the northern and southern sections of the county.

**Cheshire County:** Jaffrey-Peterborough District Court and a facility to be located in Keene.

The Cheshire County site plan is one of the most difficult, and, therefore, likely to be among the last implemented. Neither the Cheshire Superior Court nor the Keene District Court is adequate for existing needs and the Committee sees no realistic way to incorporate a JBFD in either facility.

**Coos County:** Colebrook District Court, Berlin District Court and Lancaster court facility.

The Coos County proposal recognizes the geographical needs of the residents of the county. A change in catchment area will be needed to move the JBFD portion of cases from the Gorham District Court into the Berlin District Court. It is contemplated that, since approximately one full-time judge equivalent is needed to hear all of Coos County's JBFD cases, the judge or judges assigned to Coos County will rotate from site to site, making optimum use of courtroom space in the three proposed facilities and limiting inconvenience to the public.

**Grafton County:** Lebanon District Court, Plymouth District Court, Littleton District Court and the Grafton County facility.

The Grafton County proposal recognizes that the current FD configuration in Grafton County generally works well.

**Hillsborough County-Northern District:** Hillsborough County Superior Court North and Goffstown District Court.

The Hillsborough County North proposal acknowledges the high volume of cases in the district, and, as well, removes JBFD cases from the Manchester District Court (relocating them in the superior court). It may require a change in catchment area to permit certain towns to be located in more convenient JBFD sites.

**Hillsborough County-Southern District:** Hillsborough County Superior Court South, Milford District Court, Merrimack District Court.

The Hillsborough County South proposal acknowledges the high volume of cases in the district and, as well, removes JBFD cases from the Nashua District Court (relocating them in the superior court), thus relieving pressure on that overcrowded facility. This district may also require some changes in catchment areas.

**Merrimack County:** Franklin District Court, Hooksett District Court, and either Merrimack County Superior Court or Concord District Court.

The Merrimack County proposal is, like the Cheshire County proposal, somewhat constrained by facility problems. The Franklin and Hooksett District Courts will, with the addition of JBFD cases, become essentially full-time facilities. The Committee proposes that the Concord District Court become a dedicated JBFD site along with the remaining district court cases. The Committee recommends using the Concord District Court as the JBFD site because the existing superior court facility cannot accommodate either the volume of cases or the necessary staff. It may be necessary to use Merrimack County Superior Court space for "overflow" cases. The construction of a new court facility for Merrimack County could obviate these difficulties.

It is also proposed that, until Henniker and Hillsborough District Courts are consolidated and have a suitable facility, JBFD cases from those catchment areas be handled in Concord.

**Rockingham County:** Derry District Court, Salem District Court, Portsmouth District Court and Rockingham County facility.

The Rockingham County proposal recognizes that, with certain exceptions, the Rockingham County FD sites accommodate the needs of the county. A change in catchment area is needed, however, to relieve pressure on Derry Family Division. The Committee proposes that cases from Nottingham, Northwood, Deerfield and Raymond be moved from Derry FD to Brentwood FD and that cases from Newfields, Newmarket and Stratham be moved from Brentwood FD to Portsmouth FD.

**Strafford County:** Dover District Court and Strafford County facility;

The Strafford County proposal makes use of the two best facilities in the county. JBFD cases from the Rochester District Court catchment area will move into the Strafford County facility, relieving pressure on the overcrowded

Rochester District Court facility. The Dover District Court facility will house JBFD cases from its own as well as the Durham District Court's catchment area.

**Sullivan County:** Newport District Court and Claremont District Court.

The Sullivan County proposal makes use of the two best facilities in the county. A change in catchment area will be needed to move New London JBFD cases into the Newport FD, since the geographic proximity for those cases is far closer to Newport than to Concord, the current location for those cases.

This overall site proposal takes into account the geographical idiosyncrasies of each county, as well as caseload volume. Some counties have two sites, some have three or four and Hillsborough has five. Altogether, the Committee recommends the establishment of twenty-nine JBFD sites. This is necessitated by a combination of geographical considerations, facility considerations and caseload volume. **See Attachment 1.**

As noted, it will require a change in some existing district and superior court catchment areas, and will require a shift in staffing.

### **3. Draw Upon Experienced Judges and Staff Committed to Family Related Issues**

#### **Judicial**

The Committee has recommended that each trial court transfer to the JBFD judicial resources equal to its transferred weighted caseload. In the superior court all existing marital master positions will be transferred. In the district court funds equivalent to those designated to be used to adjudicate domestic violence and juvenile matters will be transferred. In the probate court funds equivalent to those designated to be used to adjudicate termination of parental rights, guardianship over minors and some adoptions will be transferred.

The JBFD will, in turn, utilize those funds that are transferred to pay per diem district court and probate court judges to sit in the JBFD. Once the superior court is reduced in size to 22 judges, superior court judges will no longer hear marital cases. Marital masters will, of course, be assigned to preside over JBFD matters as well. These transfers and assignments will be made as the implementation plan is effectuated during the transition period.

The judicial branch is currently in the process of undergoing a review of its weighted caseloads by the National Center for State Courts. Unfortunately, the final report from the National Center will not be available prior to the issuance date of this report. The judicial branch will inform the Legislature of the results of that report and any impact upon this Implementation Plan as soon as it is available.

### Clerical

Clerical staff in each of the existing trial courts tends to be assigned to specific areas of the court's jurisdiction. This is especially so in larger court locations. As the working group discussed various staffing models, it was determined early, that to make the most effective use of staff knowledge and experience, staff currently performing functions related to the JBFD jurisdiction should, wherever possible, be transferred into similar positions in the JBFD. Almost seventy such positions were identified in each of the existing trial courts and a preliminary staffing matrix was developed deploying staff to new or existing JBFD locations. **See Attachment 2**

The judicial branch will develop a mechanism by which staff will be administratively transferred into the JBFD with allowance made for those individuals for whom such a transfer may cause a hardship, e.g. increased travel, etc. The development of this clerical implementation plan assures continuity in the processing of cases, maintenance of "institutional memory" and a cadre of staff who have already demonstrated their commitment to family issues.

Case managers are the most effective and positive link between the court and self-represented litigants. They are important specialists and the JBFD should have an adequate number of them to staff all JBFD sites.

### Administrative

In addition to the need for case processing staff is the need to provide administrative oversight at each JBFD Location. The working group has made every attempt to consider creative alternatives to our existing model wherever possible. For example: the need for a clerk at every site was discussed at an early point in the process. Our conclusion was that since almost all JBFD locations will share space with other courts, there is less need for someone with clerk status at each site. On the other hand, there is a clear need to have a staff member charged with the authority to make decisions at each location.

The plan as developed, calls for eleven regional clerks having administrative responsibility for one or more smaller JBFD locations. Each site not having a full-time clerk assigned to that location will have one staff member assigned a position of authority, probably designated as a deputy clerk. Additionally, in larger sites, supervisors will be assigned responsibility for sections of the JBFD, e.g. marital, juvenile, etc. The JBFD will, however, remain committed to cross-training of all staff in order to guarantee consistency and ownership by the staff of the full responsibility for all issues coming before the JBFD.

The working group notes that certain personnel currently assigned to the superior court, district court or probate court may find their responsibilities shifted

into the JBFD as superior, district and probate court cases are folded into the JBFD over the next few years.

#### **4. Increase Visibility of JBFD Within the Judicial Branch Administrative Structure**

The working group recommended to the Committee a governance structure as follows: A JBFD administrative judge would be a member of the judicial branch administrative council and report directly to the supreme court. A group of regional supervisory JBFD judges and masters would assist the JBFD administrative judge as needed. Reporting to the JBFD administrative judge would be two administrators (the current administrator and a second administrator to be hired when the JBFD expands into the second half of the state). Reporting to the JBFD administrators would be court monitors, case managers, court systems clerks, law clerks and individuals filling child support related positions funded, in part, with federal IV-D funds. In addition to court assistants processing cases, administrative support will be needed for scheduling, dictation and other functions. **See Attachment 3**

#### **5. Statewide Implementation Plan**

The Committee recommends that Coos, Carroll and Sullivan counties be added to the JBFD in FY 2006. This addition would mean that 50% of New Hampshire's counties would have a JBFD on or about the end of FY 2006. The Committee recommends that, depending upon facilities, Strafford and either Belknap or Merrimack Counties be added in fiscal years 2006-07. Hillsborough County Northern and Southern Districts would be added in fiscal years 2007-08. The Committee recommends that Cheshire County be added to the JBFD last because of facility limitations of which there is urgent need for solution. It is possible that the districts served by Jaffrey/Peterborough District Court could be added sooner.

#### **6. Effect of Statewide JBFD on Existing Trial Courts**

When fully and finally implemented, the JBFD will comprise approximately 50% of the total volume of cases filed system wide. The judges and staff will follow the cases. An analysis of the case volume, using currently available weighted caseload figures (year-end 2003), reveals that a statewide JBFD will require an additional 27.64 full-time judge equivalents and an additional 69.54 full-time clerical staff equivalents beyond staff already allocated to the Grafton and Rockingham County family divisions. However, it should be noted that the National Center for State Courts is currently finalizing its study of the New Hampshire judicial and clerical case weights. Findings and recommendations from that analysis may result in changes in the full-time judge and clerical equivalents necessary for a statewide JBFD. **See Attachments 4 and 5.**

The effect of the JBFD on the other trial courts will be substantial.

## Superior Court

Based upon existing weighted caseload figures, the marital cases that will be transferred from the superior court to the JBFD, once it is fully operational, will account for approximately 50% of the superior court's workload (ranging from a high of 58.2% in Sullivan County to a low of 32.25% in Hillsborough County-North). These figures may be somewhat misleading, however, given the fact that the JBFD will not be fully implemented for at least another three years, and criminal filings in the superior court have increased by 33.6% over the last four years. Nonetheless, it is clear that the removal of marital cases from its jurisdiction will result in a significant downsizing of the superior court. The legislature has recognized as much by providing in HB 643-FN that the size of the superior court will be reduced from 29 to 22 judges through attrition.

At the present time, each superior court location in the state has at least one judge assigned to it on essentially a full time basis. However, once the JBFD is fully operational throughout the state, the caseload of the superior court in the smaller counties will not be sufficient to continue this practice. Although it is not possible to predict with certainty how superior court judges will be assigned three years into the future, we anticipate that in counties such as Coos, Carroll, Sullivan and, perhaps, even Cheshire, a superior court judge will not be assigned on a full time basis. Rather, each of these small counties is likely to be "grouped" together with adjacent counties for judicial assignment purposes. Although the clerks' offices of each court location will be staffed on a full time basis, judges will be assigned to the "grouped" locations and will sit in each county only as often as necessary to deal efficiently with the caseload in that county. For example, it seems probable that a superior court judge will be present in Coos, Carroll and Sullivan Counties only approximately every other month. During times when no superior court judge is present in a particularly court location, matters requiring immediate judicial action will be transmitted to another location within the "grouped" counties where a judge is available.

Below, we set out a sample proposal, which depicts how various counties might be "grouped" and the number of judges that would be assigned to each grouped and non-grouped court location:

<u>Court Location</u>	<u>Total Judges Assigned</u>
Coos-Grafton Group	2
Belknap-Merrimack Group	3.5
Carroll-Strafford Group	3
Cheshire-Sullivan Group	2
Rockingham County	4
Hillsborough County-North	4.5
Hillsborough County-South	<u>3</u>
Total Judges	22

## District Court

The transfer of juvenile and domestic violence cases from the district courts in the eight non-family division counties into the family division could mean a transfer of as much as 30% of those courts' judicial weighted caseload. The judicial branch is currently in the process of revising and expanding the use of the weighted caseload system of evaluation of judicial need as recommended by the Legislative Budget Office audit. The results of that study are not expected until January 2005. Consequently, a precise articulation of judicial impact is not possible at this writing. However, it can be stated unequivocally that whatever the results of the weighted caseload study show is required to judicially process juvenile and domestic violence cases in the district court, an equal amount of funds and full-time judicial equivalents will be transferred to the JBFD.

The model recommended by the Implementation Committee anticipates that a number of district court judges will be invited to serve as family division judges as the JBFD expands statewide. Those judges will be paid with funds transferred by the district court. Whenever possible, the Committee recommends that among the criteria to be considered in selecting family division judges, the supreme court include the geographic connection between the judge and the sites the judge will serve. In district courts whose caseloads will decline once the JBFD is implemented, judges will be assigned non-JBFD matters exactly as has occurred in Rockingham and Grafton Counties since the inception of the family division in 1995. Since many JBFD sites will be co-located in district court facilities, and since district court judges will continue to serve in the JBFD, it is not anticipated that there will be any decrease in judicial availability statewide. In fact, in many cases, to the extent JBFD judges are available at district court locations, judicial availability may actually increase.

On the clerical side, the weighted caseload shows that, at present, approximately 30 staff members are assigned juvenile and domestic violence work in the state's 37 district court locations. As the JBFD is implemented, a number of staff will be transferred into the JBFD consistent with the demonstrated need as reflected in the weighted caseload. Every attempt will be made to place employees at or near their current court location.

## Probate Court

While the transfer of specific case types (minor guardianship, termination of parental rights, some adoptions) into the family division will not significantly impact the volume of cases in the family division (4%), it will result in a substantial loss of judicial workload (15%) in the probate court. Furthermore the variety of subject matter jurisdiction of the probate court will be decreased. It is hoped that this will be offset by the fact that a number of part-time probate judges and some full-time probate judges will seek to become involved in the family division as it expands throughout the state.

Because there is only one probate judge in each county (located at the county courthouse), it is contemplated that the criteria to be used by the supreme court in selecting family division judges will facilitate the use of probate judges in the family division. The probate court for its part will also attempt to work collaboratively with superior court as they both share the same sites in all counties.

There is currently an ongoing evaluation of the transfer of staff from the probate courts to the family division. While the exact number is not as yet certain, it does not appear to be a large number. Care will be taken not to unduly burden the smaller counties when these transfers will be made.

## **7. Recommended Statutory Changes**

There are several statutory changes necessary for statewide implementation of the JBFD, as well as changes which are not essential, but which are highly recommended by the Committee—such as the proposal that would eventually allow for the appointment (through the traditional Governor and Council process) of full time JBFD judges. The Committee has included its legislative proposal in this report. **See Attachment 6.**

## **8. Statewide Issues**

The Committee is attempting to develop a statewide JBFD using, to the extent possible, resources now at the disposal of the judicial branch; however, it urges recognition of the fact that over time, additional resources, such as greatly increased numbers of case managers, the addition of more options, such as mediation and parent training, and other such services, are likely to be necessary, especially if the Legislature expects delivery of improved and more expeditious handling of JBFD cases. **See Attachment 7.**

It is important, as well, to recognize that record-taking and security are key issues. To the extent possible, judges and masters in the JBFD should be assured of permanent monitors to assist them in taking the record. JBFD cases, particularly divorce and custody cases, tend to be both labor and paper-intensive, including an exceptionally high volume of narrative orders, many of them lengthy. Judges and masters should be assured of dictation assistance, either on-site or remote, so that more of their time is available to conduct hearings; thus, more hearings can be scheduled more quickly. Adequate support staff must be part of any overall plan.

It is also essential, that each JBFD site be assured of adequate security.

An additional issue is the extent to which the JBFD will have law-trained staff. The judges and masters are, at present, often the only legally trained people on the FD staff. The result is that they are frequently called upon to instruct staff on law and procedure. It is not cost effective for the system to have its adjudicators performing the functions that a law-trained clerk performs. The Committee urges the JBFD to employ law-trained individuals to the extent possible.

## Conclusions and Recommendations

1. Reduce the adversarial nature of proceedings involving families.
2. Locate JBFD sites in areas geographically accessible to families.
3. Draw upon experienced judges and staff committee to family-related issues.
4. Increase visibility of the JBFD within the judicial branch Administrative structure.
5. Enact legislation necessary for statewide JBFD implementation.
6. First tier expansion: Coos, Carroll and Sullivan Counties.
7. Second tier expansion: Depending upon facilities, Strafford and either Belknap or Merrimack Counties would be added next, followed by Hillsborough County Northern and Southern Districts.
8. Third Tier expansion: Because of facilities limitations in Cheshire County, the Committee recommends that county be added to the JBFD last, although it is possible that the districts served by Jaffrey/Peterborough District Court could be added sooner.